

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1379 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NATVARBHAI KISHORBHAI PATEL

Versus

FATAJI RANAJI PARMAR

Appearance:

MR RC KAKKAD for Petitioner-original defendant
None present for Respondents-original plaintiffs

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/11/1999

ORAL JUDGEMENT

#. Heard the learned counsel for the petitioner.

#. The order dated 29th July 1999 of the Civil Judge (J.D.), Prantij passed in Regular Civil Suit No.12 of 1991 below ex.109 gives cause to the original defendant to file this civil revision application under Section 115 of the Civil Procedure Code, 1908. Under the impugned order, the application filed by plaintiffs-respondents,

ex.109 came to be allowed and the documents produced by defendants through their witness was not allowed to be exhibited. This document is a Kutchha writing which is not registered nor executed on proper stamp paper. This document was sought to be produced and exhibited for the sake of signature of writing but it was objected and that objection found favour of the learned trial court and the same was not ordered to be exhibited.

#. From the order of the learned trial court, I find that that document was exhibited by the predecessor only for the sake of signature. The defendant wanted it to be exhibited for all purposes, but I do not find any justification in this contention. The reasons given by the learned trial court for not taking this document in evidence for all the purposes cannot be said to be arbitrary or illegal. It cannot be said that the learned trial court in passing of the impugned order committed any material irregularity in exercise of its jurisdiction. This case does not fall under any of the clauses, (a), (b) or (c) of sub-section 1 of Section 115 of the C.P.C. and no interference of the court therewith is called for. Otherwise also, if the order impugned in this civil revision application is allowed to stand, it will not occasion failure of justice or cause any irreparable injury to the defendant. It is a question of taking the document in evidence and if the petitioner considers that it has wrongly been not taken in evidence, it is always open to him to raise this plea if ultimately the decision goes against him, in the appeal if he desires to challenge final decision of the lower court before the appellate court. Clause (b) of proviso to sub-section 1 of Section 115 of C.P.C. clearly bars interference of this court in this matter. Reference in this respect may have to the recent decision of the apex court in the case of Mahabir Prasad Singh v. Jacks Aviation (P) Ltd., reported in (1999) 1 SCC 37. The Hon'ble Supreme Court, in that case held:

The High Court committed a jurisdictional error in entertaining the revision petition filed by the defendant challenging the order dismissing the application for "suo motu" transfer of the case. That order is clearly not revisable by the High Court in view of the specific interdict embodied in the proviso to S.115(1) CPC. Under the same sub-section, a High Court is empowered to call for the records of any case which has been decided by any court subordinate thereto, if it had exceeded or failed to exercise the jurisdiction vested in it, or had acted illegally

or with material irregularity. In such cases, the High Court has power to make such order as it thinks fit. The restriction against exercise of such a general power has been incorporated in the proviso which was inserted in the sub-section by the CPC Amendment Act of 1976.

Out of the two clauses in the proviso, the latter clause could be resorted to only if that order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the respondent. Thus, even if such an order passed by the subordinate court has any illegality or is affected by material irregularity, the High Court will not interfere unless the said order, if allowed to stand, would occasion a failure of justice or its effect would be infliction of irreparable injury to any party.

#. In the result, this civil revision application fails and the same is dismissed. Rule discharged. Interim relief earlier granted by this Court stands vacated. However, dismissal of this civil revision application will not come in the way of the petitioner to challenge the order impugned in case if ultimately the decision goes against him in the suit, in the appeal, if he so desires to file.

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